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CRL A No.613 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-02-2026

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

**CRL A No.613 of 2023
and
Crl.M.P.No.7559 of 2023**

Hussain Mohammed Yunus

...Appellant/Accused

Vs

The Union Territory of Puducherry
Rep.By
The Station House Officer,
Muthialpet Police Station,
Puducherry.
Cr.No.31 of 2019.

...Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to set aside the conviction and sentence passed by Learned Special Judge, Puducherry in Spl.S.C.No.37 of 2019 dated 06.08.2020.

For Appellant:	M/s.V.S. Senthilkumar
For Respondent:	Mr.M.V.Ramachandra Murthy Public Prosecutor (pondicherry)

ORDER

The appeal challenges the Judgment of conviction and sentence imposed on the appellant vide Judgment dated 06.08.2020 passed in Special S.C.No.37



of 2019 on the file of the learned Special Judge, Puducherry, for the offences punishable under Sections 367, 377, 323 and 506(ii) of the Indian Penal Code (hereinafter referred to as **“the IPC”**) and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as **“the POCSO Act”**). The appellant/sole accused was convicted for the aforesaid offences and sentenced as follows:

Offence under Section	Sentence imposed
367 of the IPC	To undergo RI for seven years and to pay a fine of Rs.1,000/- in default to undergo RI for three months.
377 of the IPC	To undergo RI for seven years and to pay a fine of Rs.1,000/- in default to undergo RI for three months.
323 of the IPC	To undergo SI for three months.
506(ii) of the IPC	To undergo RI for six months.
Section 6 of the POCSO Act, 2012.	To undergo RI for ten years and to pay a fine of Rs.1,000/- in default to undergo SI for three months.
The sentences were ordered to run concurrently.	

2. (a) The case of the prosecution is that the appellant/sole accused and the victim boy belong to the same village; that on 08.04.2019, between 08.00 p.m. and 09.00 p.m., the appellant allegedly kidnapped the minor boy aged about 8 years from the lawful guardianship of his parents on his motorcycle; that he took the child to a coconut grove in Auroville and committed penetrative sexual assault by applying coconut oil to his private part and that of the victim and subjected the victim to anal sexual intercourse; and that the appellant



compelled the victim to apply his mouth to the private part of the appellant and thus committed the aforesaid offences.

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(b). Based on a complaint given by the father of the victim/P.W.1, the Sub-Inspector of Police/P.W.17 registered an FIR/Ex.P18 for the offences under Sections 323, 367 & 506(ii) IPC and Section 6 of the POCSO Act. The investigation was thereafter taken up by the Inspector of Police/P.W.18, who arranged for the medical examination of the victim and recording of his statement under Section 164 Cr.P.C., and thereafter filed the final report for the aforesaid offences.

(c) On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with, committed to the Court of Sessions, i.e., Principal Sessions Court, Puducherry, and made over to the learned Special Judge, Puducherry, for trial, which was taken on file as Spl.S.C.No.37 of 2019. The Trial Court framed five charges against the appellant for the offences under Sections 367, 377, 323, and 506(ii) IPC and Sections 5(i), 5(l), and 5(m) read with Section 6 of the POCSO Act, and when questioned, the accused pleaded 'not guilty.'

(d) To prove its case, the prosecution had examined 18 witnesses as P.W.1 to P.W.18 and marked 22 exhibits as Exs.P1 to Ex.P22, besides eight material



objects as M.O.1 to M.O.8. When the accused was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same.

The accused neither examined any witness nor marked any document on his side.

(e) On appreciation of oral and documentary evidence, the trial Court convicted the appellant and sentenced him as stated in the first paragraph of this Judgement. Hence, the accused has preferred the instant appeal challenging the said conviction and sentence.

3. The learned counsel for the appellant/accused would submit that the prosecution has failed to establish the case beyond reasonable doubt; that there was a delay in lodging the complaint; that the victim disclosed the occurrence to his father only two days later, when he allegedly saw the appellant near his house; that the victim has made material improvements at every stage during the investigation and in his deposition before the Court; and that the medical evidence does not corroborate the version of the victim, and therefore, the impugned judgment is liable to be set aside.



4. The learned Public Prosecutor, Government of Puducherry, appearing for the respondent, *per contra*, would submit that delay in lodging the complaint in cases of sexual assault against children would not affect the prosecution case; that the victim had consistently stated about the penetrative sexual assault in his statement recorded under Section 164 Cr.P.C. and in his deposition before the Court; that a Test Identification Parade was conducted; that there is no reason to disbelieve the testimony of the victim; and that therefore, the impugned order does not suffer from any infirmity, and prayed for dismissal of the appeal.

5. As stated earlier, the prosecution examined 18 witnesses to prove its case. P.W.1 is the father of the victim. P.W.2 is the victim. P.W.3 is the mother of the victim, who corroborates the evidence of P.W.1 and P.W.2. P.W.4 is a member of the Child Welfare Committee, who speaks about the lodging of the complaint to the police on 12.04.2019. P.W.5 is a neighbour of P.W.1 and a witness to the observation and seizure mahazars. P.W.6 is a member of Childline, who speaks about the statement given by the victim. P.W.7 is the Village Administrative Officer, who signed the confession statement of the appellant and the seizure mahazar/ Ex.P12. P.W.8 is an employee of the finance company, who furnished details regarding the ownership of the motorcycle allegedly used for the commission of the offence. P.W.9 is the constable who assisted the Investigating Officer. P.W.10 and P.W.11 are photographers who



recorded the video of the victim's statement and were witnesses to the mahazars. P.W.12 is the Doctor who examined the victim and issued the medical examination report/ Ex.P14. P.W.13 is the Doctor who examined the appellant and issued the potency certificate/ Ex.P15. P.W.14 examined the bite marks found on the victim and spoke about the report issued by P.W.15, marked as Ex.P16. P.W.15 confirmed the same. P.W.16 is the learned Magistrate who recorded the statement of the victim under Section 164 Cr.P.C. and conducted the Test Identification Parade/Ex.P17. P.W.17 is the Sub-Inspector of Police who registered the FIR. P.W.18 is the Investigating Officer.

6. From the above narration, it is clear that the prosecution case primarily rests on the testimony of the victim and the medical evidence. The remaining evidence is only to corroborate their evidence.

7. As regards the offence of penetrative sexual assault, the prosecution case rests upon the testimony of the victim. In the complaint based on the statement made by the victim, P.W.1 has stated that the child was subjected to sexual assault. However, the exact nature of the assault was not elaborated in the complaint. Before the Doctor/P.W.12, who examined the victim on 15.04.2019, the victim stated that he was subjected to anal sexual intercourse. However, the victim did not make any allegation that the appellant compelled him to apply his mouth to the private part of the appellant. For the first time in his statement under Section 164(5) Cr.P.C., before the learned Magistrate, the



victim boy had stated that he was subjected to anal intercourse as well as made to perform oral sex on the appellant. Thereafter, in the deposition in the trial Court, the victim reiterated his version in the statement made before the learned Magistrate.

8. It is seen that a Test Identification Parade was conducted and the victim, P.W.2, had identified the appellant. The victim's evidence insofar as sexual assault is concerned is cogent and convincing. The victim, P.W.2 and the father of the victim, P.W.1, have stated about the sexual assault and the fact that the appellant had committed the same. The cross-examination of these two witnesses has not discredited the two witnesses in any manner in relation to their deposition on sexual assault.

9. The question is what the nature of the sexual assault committed by the appellant/accused. As stated earlier, in the earliest version, the details of the alleged sexual assault have not been mentioned. It is no doubt true that FIR is not an encyclopedia, and non-mentioning of the nature of sexual assault would discredit the witnesses. However, in Ex.P14, the Doctor, P.W.12, who examined the victim, P.W.2, had observed as follows:



“I am of the opinion that: There are no sign suggestive of anal intercourse but there is evidence of physical assault. Evidence of bite mark on the cheek. Time of injury : More than 5 days.”

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10. As stated above, before the Doctor, P.W.12, the victim, P.W.2, had not stated about the alleged act of the appellant penetrating his private part into the mouth of the victim. The Doctor in his report in paragraph 15 had observed so. The Doctor had also opined that there are no signs suggestive of anal sexual intercourse. In fact, the Doctor had observed that the appellant kissed the victim “mouth to mouth.” The Doctor had observed that there were bite marks on the victim boy.

11. Considering all the above facts, this Court is of the view that the prosecution had not established its case regarding penetrative sexual assaults said to have been committed by the appellant namely that he subjected the victim to anal sexual intercourse and inserted his private part into the mouth of the victim boy. However, the prosecution had established that the victim was subjected to sexual assault which is the earliest version of the victim boy that is reflected in the FIR and in the medical report of the Doctor.

12. *Falsus in uno, falsus in omnibus* is not applicable to our Country. Hence, the victim’s evidence, insofar as it is true, can be accepted. The evidence establishes the sexual assault committed by the appellant. Therefore, this Court is of the view that, considering the facts and circumstances, the appellant is



guilty of the offence under Section 9 m r/w 10 of the POCSO Act. The appellant is also not guilty of the offence under Section 377 of the IPC.

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13. The appellant is found guilty of the offences under Sections 367, 323 and 506 (ii) of the IPC and this Court confirms the sentence imposed by the trial Court for the said offences. The appellant is found not guilty of the offence under Section 6 of the POCSO Act and Section 377 of the IPC. Instead, he is found guilty under Section 9(m) r/w 10 of the POCSO Act. The appellant is sentenced to undergo 7 years RI and to pay a fine of Rs.1000/- in default, to undergo RI for three months. The sentences imposed for the other offences are confirmed. Accordingly, it is ordered as follows:

(i) The conviction and the sentence imposed on the appellant for the offences under Sections 367, 323 and 506(ii) of the IPC, by the learned Special Judge, Puducherry vide Judgment dated 06.08.2020 in Spl.SC.No.37 of 2019, are confirmed.

(ii) The appellant is found guilty of the offence under Section 9(m) r/w 10 of the POCSO Act, and the appellant is sentenced to undergo 7 years RI and to pay a fine of Rs.1000/- in default to undergo RI for three months.

(iii) The fine amount already paid, if any, shall be adjusted against the fine amount imposed now.

(iv) The appellant is acquitted of the remaining offences charged as stated above.



(v) The period of sentence already undergone by the appellant shall be set off under Section 428 Cr.P.C.

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14. In the result, the Criminal Appeal stands partly-allowed.

Consequently, the connected miscellaneous petition is closed.

23-02-2026

skr/dk
Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

To

1. The Special Judge, Puducherry.
2. The Superintendent of Prison,
Central Prison,
Kalapet,
Puducherry.
3. The Station House Officer,
Muthialpet Police Station,
Puducherry.
4. The Public Prosecutor,
Madras High Court,
Chennai – 600 104.



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SUNDER MOHAN J.
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CrI.M.P.No.7559 of 2023

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